IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 7756 of 2004

Shri Gopal Bhavana Bhangare ..Petitioner

vs.

1. Kalyan Dombivli Municipal Corporation & another ..Respondents

Shri N.V.Bandivadekar for petitioner
Shri A.S.Rao for respondents.

CORAM: A.P.SHAH &
S.U.KAMDAR JJ.
22nd September, 2004

P.C.

Rule.

2. Learned Counsel for the respondents waive service. By consent, rule is made returnable forthwith.

3. By this petition, the petitioner is seeking to quash and set aside the departmental proceedings initiated against the petitioner vide chargesheets dated 19th May, 2003 and 26th December, 2003 issued by the Municipal Commissioner of Kalyan Dombivli Municipal Corporation. The principal contention of the petitioner is that the Municipal Commissioner has no power, authority or jurisdiction to initiate

proceedings in respect of the charges levelled against the petitioner and the said proceedings are wholly without jurisdiction.

4. The submission of the petitioner is based upon a decision of the Division Bench of this Court in Writ Petition No.4112 of 1993 decided on 22nd July, 2003 (Prabhakar Shrirang Jagdale Vs.Kalyan Dombivli Municipal Corporation and anr.) where this Court has held that the proceedings initiated by the Commissioner were without jurisdiction and authority of law. Only the Corporation could have initiated such proceedings. The proceedings were, therefore, held to be illegal and the order was set aside. The Corporation, however, was granted liberty to initiate fresh proceedings in accordance with law.

5. In the instant case the chargesheets dated 19th May, 2003 and 26th December, 2003 were issued by the Municipal Commissioner on various grounds to which the petitioner filed his reply and denied to have committed the alleged misconduct. However, the reply was not accepted and enquiry officer came to be appointed for the purpose of departmental enquiry. The enquiry officer has submitted the enquiry report and exonerated the petitioner fully

in respect of chargesheet dated 19th May, 2003. In respect of chargesheet dated 26th December, 2003 it was held that charge no.1 was proved while charge no.2 was not proved. Pursuant to the report of the enquiry officer, the Municipal Commissioner has issued a show cause notice to the petitioner accompanied by the copy of the enquiry report and called upon the petitioner to file his say. Accordingly, say was filed by the petitioner. By notice dated 21st August, 2004 the Municipal Commissioner has held that the petitioner is guilty of charges under the second chargesheet dated 26th December, 2003 and, therefore, the petitioner has been called upon to show cause why the punishment of dismissal under sec.56(2)(h) of the Bombay Provincial Municipal Corporation Act, 1949 should not imposed on him.

6. Learned Counsel appearing for the petitioner submitted that the point is concluded by the decision of the Division Bench in Prabhakar Shrirang Jagdale's case (supra). In similar circumstances the Court held that the Commissioner could impose penalties contemplated by clauses (a), (b), (d), (e) and (f) of sub-section (2) of section 56. In other matters the Commissioner has no power or authority of law. Since the point is covered by

the decision of the Division Bench in Writ Petition No.4112 of 2003, the petition deserves to be allowed and is hereby allowed by quashing and setting aside the chargesheets dated 19th May, 2003 and 26th December, 2003. It will, however, be open to the respondent Corporation or any officer authorised by the Corporation to take fresh proceedings in accordance with law and this order will not preclude the Corporation from holding the denovo enquiry against the petitioner.

7. Rule is accordingly made absolute to the extent indicated above. No order as to costs.